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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,294	05/12/2005	Bernard Paul	2142-01000	5086
23505	7590	10/08/2008		
CONLEY ROSE, P.C. David A. Rose P. O. BOX 3267 HOUSTON, TX 77253-3267			EXAMINER WARE, DEBORAH K	
			ART UNIT 1651	PAPER NUMBER
			NOTIFICATION DATE 10/08/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pathou@conleyrose.com

Office Action Summary**Application No.**

10/520,294

Applicant(s)

PAUL, BERNARD

Examiner

DEBBIE K. WARE

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 5-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-15 are pending.

Response to Amendment

Applicants' Response, Amendment and extension of time filed June 20, 2008, have been received and entered. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in France on July 1, 2002. It is noted, however, that applicant has not filed a certified copy of the FRANCE 0208212 application as required by 35 U.S.C. 119(b).

Information Disclosure Statement

The information disclosure statement (IDS) submitted on July 8, 2005, was filed and received. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Election/Restrictions

Applicant's election without traverse of Group I, claims 1-4, in the reply filed on November 27, 2007, is acknowledged. Claims 5-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention(s), there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 27, 2007.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over newly cited Bruneteau et al, cited on enclosed PTO-892 Form in view of previously cited WO 94/19950 patent of record.

Claims are drawn to application of compositions of microorganisms for biologically controlling the cryptogamic vine diseases, characterized in that it comprises in a mixture at least one bacterium and at least one yeast, the bacterium or bacteria and the yeast or yeasts being non-toxic to the plant. The bacteria can be *Bacillus subtilis* and the yeast can be *Pichia*.

WO94/19950 teaches application of compositions of microorganisms for biologically controlling the fruit diseases, characterized in that it comprises in a mixture at least one bacterium and at least one yeast, the bacterium or bacteria and the yeast or yeasts being non-toxic to the plant. The bacteria can be *Bacillus subtilis* and the yeast can be *Pichia*. See the abstract and page 3, lines 9 and 16.

Bruneteau et al teach that sphingolipids are effective for treating cryptogamic disease which is a fruit disease and are represented widely in nature in yeasts and bacteria, note col. 4, lines 39-45 and col. 5 line 47.

The claims differ from WO in that treating cryptogamic disease is not specifically taught by the cited WO reference.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to apply a yeast and bacteria, such as those of the genera *Bacillus* and *Pichia*, as disclosed by WO for treating a fruit disease because as disclosed by Bruneteau et al sphingolipids are effective for treating cryptogamic disease which is a fruit disease and are represented widely in nature in yeasts and bacteria. Therefore, one of skill in the art would have been motivated to apply the yeast and bacteria to fruit for treating cryptogamic vine disease. Each of the claimed features are either disclosed or suggested by the cited prior art. In the absence of persuasive evidence to the contrary the claims are rendered prima facie obvious over the cited prior art.

Response to Arguments

Applicant's arguments filed June 20, 2008, have been fully considered but they are not persuasive. The previous rejections have been removed and in view of the newly set forth amendments of which the claims are more clearly directed to a method by the newly added applying process step, a new reference has been discovered for which to better teach the newly amended claimed invention.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.

The remaining references listed on the previously enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 571-272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DKW/
Deborah K. Ware
Examiner
Art Unit 1651

/David M. Naff/
Primary Examiner, Art Unit 1657